IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6244 of 2000

with

SPECIAL CIVIL APPLICATION NOS. 10034,10284, 10289, 10813, 9996,12460, 8025,9297, 9987, 9988, 9976, 9055, 8364, 9039, 8201, 8592, 8582, 8565, 8357 ALL OF 2000.

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GENERAL SECRETARY GJARAT MAZDOOR SENA

Versus

MUNICIPAL COMMISSIONER

Appearance:

Ms. K.A. Mehta and MR RD RAVAL for Petitioners

MR PRANAV G DESAI for Respondent Muni. Corporation, Baroda.

Ms. Manisha Lavkumar & Mr. IM Pandya, AGPs for Respondent No. 4

Mr. Amit J.Shah for respondent Muni. Corporation, Ahmedabad.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/12/2000

COMMON CAV JUDGEMENT

The Courts should interpret the constitutional provisions against the social setting of the country so as to show a complete consciousness and deep awareness of the growing requirements of the society, the increasing needs of the nation, burning problems of the day and the complex issues facing the people which the legislature in its wisdom, through beneficial legislation, seeks to solve. The judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic, rather than rigid.

Brief facts of the present group of petitions are as under:

All the petitioners were appointed by the respondents in Mid Day Meal Scheme ("the Scheme" for short). According to the case of the petitioners, they were appointed and were working since many years. According to the petitioners, on each academic year, necessary forms were being filled in by the respondents and periodical appointments were being given to them with an artificial break of vacation period for which no payments were being made by the respondents to the petitioners. Some of the petitioners have worked for 15 years, 9 years, 8 years respectively. The services of the petitioners have not been regularized and there was no job security. The petitioners have pointed out that the issuance of the circular dated 8th May, 2000 has resulted into discontinuation of their services because of the fact that some of the conditions specified in the said circular, item 12 sub clause k, kh and ch. These are the items which have been objected by the petitioners and according to the petitioners, it denies right of appointment and, therefore, in this group of petitions, the petitioners have challenged the legality, validity and propriety of the said circular dated 8th May, 2000 issued by the Commissioner of Mid Day Meal Scheme, State of Gujarat, Gandhinagar. Against this group of petitions, Municipal Commissioner, Deputy Municipal Commissioner and the Deputy COllector have filed affidavit in reply and rejoinder thereto have also been filed by the petitioners.

In all these petitions, the main challenge to the circular dated 8th May, 2000 is on the ground that the said circular is unlawful, arbitrary, violative of Article 14, 16, 19 and 21 of the Constitution of India. The respondent Baroda Municipal Commissioner has filed affidavit in reply. According to the respondents Nos. 1 and 2, the Commissioner has power to issue such circular and the same is quite just, legal, proper and the petitions challenging such circular are not maintainable. The allegations made by the petitioners have been denied. According to the respondents, on each occasion, in response to the advertisements, the petitioners have been appointed for a specific period on specific terms and conditions and the contents of which have been duly agreed upon and accepted by the petitioners and, therefore, on each end of the educational year, contract has been coming to an end and, therefore, there was no relationship of master and servant and, therefore, there was no question of regularization of their services. It is also submitted that there is no discrimination or arbitrariness as alleged.

The respondent corporation has produced some orders issued in favour of the petitioners with a specific condition that these orders have been issued because of the orders passed by this court on 30th June, 2000 and subject to that, said orders have been issued by the respondents on 12thJuly, 2000.

On behalf of respondents no. 3 and 4, affidavit in reply has been filed by one Mr. B.D.Baria Assistant Commissioner, Mid Day Meal, Gandhinagar wherein it is mentioned that the appointments for the post of Sanchalak in the said Scheme is not for continuous one year but it is limited to the extent of academic term of the school and such appointments are only on part time basis. It is submitted that the appointments of Sanchalaks are made on ad hoc basis and honorarium is being paid and after the term is over, they are to be relieved. It is also made clear in the reply that this honourary services of the petitioners are not continuous service and it is limited to academic term and when the term is over, they are to be relieved from such service. For the vacation period, no honorarium is to be paid to the staff of the said scheme. It is also submitted by the respondents that some of the petitioners were given appointment in view of the orders dated 30.6.2000 passed by this court and subject to that, said orders have been given. The respondents have also produced true copy of the circular dated 8th May, 2000 and have submitted that it is the policy of the Government to give benefits as per the

policy decision, as per the Government Resolution dated 9th November, 1984.. Therefore, the State Government is entitled to have specific policy for satisfying the underlined objects of the scheme as per the resolution dated 9th November, 1984. It is submitted that in view of this, the circular dated 8.5.2000 is not arbitrary, malafide, illegal and discriminatory as alleged and is also not hit by article 14 16, 19 and 21 of the Constitution of India.

The petitioners have filed rejoinder and have pointed out that the petition is maintainable because the fundamental rights of the petitioners have been violated and one special civil application no. 9335 of 1998 has been entertained by this Court. The petitioners have relied upon annexure "C" page 23, a policy decision dated 10th November, 1998 wherein it has been specifically mentioned that item no.12 sub clause k, kh and ch thereof will not apply to the old persons and they will not be disturbed because of the new Circular dated 8th May, 2000. Repeatedly, the petitioners have pointed out that they are working since many years and because of the circular dated 8.5.2000, the petitioners are disturbed and discontinued on account of item no.12 sub clause k, kh and ch and, therefore, it is adversely affecting their right to have work in the scheme and, therefore,such change made by the Government is arbitrary, unlawful and, therefore, said circular is required to be quashed and set aside.

I have heard the arguments advanced by the learned advocates for the respective parties.

Learned advocate Mr. Raval has submitted the same thing that because of annexure "C" page 23, a conscious decision has been taken vide letter dated 10th November,1998 that this change will not apply to the old persons who were working since long and would apply to new centres. He has further submitted that this decision has been taken after detailed consideration and, therefore, change which has came into effect by circular dated 8th May, 2000 is arbitrary and unlawful as it is affecting the right of employment of the petitioner and, therefore, the said circular is violative of the fundamental rights of the petitioners. He has relied upon the orders passed by this Court (Coram : M.S. Shah,J.) in special civil application NO. 9335 of 1998 dated 5th July, 1999 and has submitted that considering the decision of this court, the petitioners are entitled to the same treatment from the government and the change made vide circular dated 8.5.2000 has adversely affected

the legal and fundamental rights of the petitioners and, therefore, this petition is required to be allowed.

Learned advocate Mr. Raval has submitted that excepting Ms. Meenakshiben, rest of the petitioners have been taken back in the scheme and they are working in the scheme, no doubt, subject to the interim orders passed by this Court on 30.6.2000. He has submitted that this circular dated 8.5.2000 is keeping reservation for some of the candidates, cutting down right of the petitioners and is imposing restrictions which is causing discrimination and the right of spouse who is an independent entity is being curtailed to get job because of this circular and, therefore, this circular is required to be quashed and set aside. He has submitted that there is no application of mind by the respondent Government and there is also no justification and there is no such policy in respect of other departments of the Government. The honorarium which has been paid to the petitioners is not a good amount because it is ranging from Rs. 200.00 to Rs.500.00 or some more amount.

Learned advocate Ms.Mehta appearing for the petitioners has also submitted that the petitioners who are citizens of India are entitled to the protection of fundamental right and by circular dated 8.5.2000, their fundamental rights have been violated by the respondent Government and wife and husband both are separate entity in law and both have separate and independent right to get employment in the State or the Corporation. She has submitted that the representations were made by the petitioners but of no avail. She has also relied upon Article 19, practice to occupation and has also pressed into service Article 21 which is relating to life and liberty which also includes livelihood of the petitioners. She has also pressed into service Article 39(b) and 35 of the Constitution of India and, therefore, in short, it is her submission that this circular dated 8th May, 2000 is curtailing legal and fundamental rights of the petitioners in view of incorporation of sub section 12 clause k, kh and ch and,therefore, it is required to be quashed and set aside.

Learned advocate Mr. Pranav Desai appearing for the Baroda Municipal Corporation has submitted that the State Government has power to impose some reasonable restrictions upon the fundamental rights of the citizen keeping in view the object of the Scheme and, therefore, if one person of a family is earning by working in the local self government or the Government or the panchayat, nagarpalika,mahanagarpalika, State Government or the

Central Government or working on part time basis, then, other member of such a family is not entitled to have a work in the scheme. This restriction has been imposed by the State Government with a view to see that in the society, there are many families which are remaining without any means of livelihood and they are not able to survive and, therefore, with a view to give opportunity to such families, such restrictions have been imposed by the Government and an opportunity has been given by the State Government to such families who are residing in the rural areas so that they may get some amount to survive and maintain the family in comparision to the families who are having regular income by working with the local government, State Government or in the Semi Governmental institutions and, therefore, according to learned advocate Mr. Desai, this is quite reasonable restrictions and policy decision of the State Government and,therefore, this court, while exercising extra ordinary powers under Article 226 of the Constitution of India, should not interfere with the same.

Learned Assistant Government Pleaders Mr. Pandya and Ms. Manisha Lavkumar have also made submissions. Ms. Manisha Lavkumar has submitted that these are not, in fact, appointments in service but these are the honorarium which have been given to the persons who are rendering some service and help to the scheme and, therefore, this cannot be considered to be the regular service because no salary has been paid to any persons who have been engaged in the scheme. She has also submitted that the honorarium is not the wages or salary and by paying honorarium, relationship of master and servant is not being established. She has further submitted that the honorarium is different kind of payment which cannot be termed as salary or wagess. She has further submitted that the maximum benefits, according to the scheme, and according to the objects of the scheme, are required to be given to the unemployed persons. She has also submitted that the petitioners are not having any vested right to have job or work in the scheme. According to her, all these are the periodical work taken under the scheme and it is only honourary service rendered by such persons and, therefore, it cannot be construed as a regular employment as alleged by the petitioners. She has also submitted that the Court should consider the kind and nature of work wherein no qualification is prescribed and, therefore, naturally, many persons who are residing in the rural areas may get some opportunity to have the work by honorarium. She has submitted that it is the power of the Government to frame the policy and decide as to how such scheme should be

implemented. It is also within the power of the Government and while framing the scheme, it is the powers with the executive to put some restrictions and to support some of the family who are remaining without any support or assistance from the Government. She has submitted that the restrictions imposed under the circular in question are reasonable and in the interest of the families who are remaining without any work and without earning even a single pie and therefore, such family must be given preference in comparision to those who are having more than one means for livelihood. She has submitted that such circular has been issued with a view to see that the family which is not able to maintain itself may get some opportunity to receive honorarium by rendering services in the scheme. She has also submitted that annexure "C" page 23 letter dated 10th November, 1998 was the decision which will apply to that academic year and shall not continue for subsequent year and, therefore, reliance placed thereupon by Mr. Raval is misconceived She has also submitted that the validity of the circular in question has not been examined by this court in special civil application no. 9335 of 1998. She has also submitted that all these are the contractual work and has relied upon rule 4 of the Bombay Civil Services Rules. She has submitted that such contractual work were taken by the Government with a view to fulfill, the underlined object of the Scheme. She has also submitted that the petitioners are not having any legal or vested right and there is no relationship of master and servant and after introduction of the scheme in the year 1984 and after considering the experience of 16 years, the Government has felt that the benefit of this scheme is required to be extended to the persons who are residing in the rural areas and this was the real object of the scheme as envisaged in the circular dated 9th November, 1984 and, therefore, after considering the long experience gained during the implementation of the scheme, this change has been made which cannot be considered as violative of the fundamental rights of the petitioners because the Government has power to impose reasonable restrictions and this scheme is based on reasonable restrictions as well as reasonable classifications and, therefore, such reasonable classification and discrimination amongst unequals cannot hit by Article 14 of the Constitution of India and, therefore, according to her, these petitions have no merit and are required to be dismissed.

Learned advocate Mr. Raval, in reply to the submissions made by Ms. Manisha Lavkumar, has submitted that, no doubt, the State Government has power to frame

the scheme but it should be subject to the mandate of the Constitution. He has further submitted that any scheme which is violative of the fundamental rights cannot stand in the eye of law. He has submitted that this scheme would require the experienced persons to run successfully the scheme and, therefore, while putting such restrictions, the main underlined object of the scheme to provide food to the children is also required to be kept in mind by the State Government. He has also submitted that the persons who are having experience of more than ten to twelve years are working by utilizing their social relations and influence to run and implement the scheme and, therefore, denial of work to the petitioners by issuance of such a circular is violative of Article 14, 16, 19 and 21 of the Constitution of India. Ms. Mehta, the learned advocate appearing for the petitioners in this group of petitions has also submitted that clause 12 (k), (kh) and (ch) applies to employes of the Government, Semi Government, local self government, corporations etc. alone and same does not apply to the persons working in the private institutions or private sectors etc. and, therefore, it amounts to discrimination. She has also submitted that the persons receiving meagre amount in the form of honorarium is also not entitled to have the work in the scheme and, therefore, it amounts to discrimination. She has also submitted that the terms of the contract are unilaterally fixed by the Government and, therefore, the persons have no choice but to accept the same and, therefore, same cannot be considered to have been accepted by the petitioners. Learned advocate Mr. Raval has also submitted that in one family, if one member is working and earning and if some more amount will be given by giving work to another member of the same family, then, by adding some more income in the family, said family will be able to leave with some dignity and therefore, such restriction amount to denial to the right to leave with dignity and, therefore, these petitions should be allowed by quashing and setting the said circular dated 8.5.2000.

Learned assistant government pleader Ms. Manisha Lavkumar has relied upon the decision of this Court (Coram : D.C. Gheewala, J.) in special civil application no. 2510 of 1986, 2389 of 1986 and 2434 of 1986 dated 17th July, 1986 and has submitted that this Court (Coram : D.C. Gheewala,J.) has considered the brochure issued by the Government dated 9th November, 1984 wherein the scheme has been considered and after considering the object, this court has rejected the identical petition and, therefore, all these petitions are required to be dismissed.

I have considered the submissions made by the learned advocates for the respective parties. In this petition, the main challenge made by the petitioner is to the circular dated 8.5.2000 and this court is required to decide as to whether the same is violative of the fundamental rights of the petitioners or not. For deciding the same, this court is also required to decide as to whether the restrictions put by said circular dated 8.5.2000 are reasonable or not. Before dealing with this question, it is necessary to keep in mind the resolution issued by the Government of Gujarat in its Department of Education bearing No. Mid-Day Meal.1384 K dated 9th November, 1984. The object of the resolution has been specifically mentioned in the Preamble of the said resolution dated 9th November, 1984 which is relevant for deciding the controversy involved in this group of petitions. Same is, therefore, reproduced as under:

"Preamble:

After the formation of Gujarat as a separate State in the year 1960, the State Government has taken a number of steps for the balanced development of the State in general and the amelioration of the socio economic conditions of the poor in particular, in conformity with the welfare goals set forth in the Constitution of India. During the period of 25 years since its formation, Gujarat has made rapid strides and in several sectors, the State is in the fore front in the country. However, it has been noticed that there are some lags in the developmental scenario of the State, especially with regard to the spectrum of activities undertaken for the amelioration of the conditions of the poor.

It is estimated that the percentage of people living below poverty line in Gujarat is about 45%. Though a variety of schemes with the Target Group approach are being implemented in the State for poverty alleviation, much more is required to be done to make a serious dent on the poverty situation. Similarly, inspite of the provisions made in the Constitution with regard to primary education, the Census of 1981 indicates that the percentage of literacy in the State is 43.70. In terms of the physical quality of life index also,Gujarat has a long way to go not only to reach an acceptable level in this regard but even to catch up with certain other States in the

country. The raising of nutritional standards, especially of the Young who constitutes the human resource potential of the country is very crucial to improve the quality of life which can be measured in terms of literacy, nutritional level and the life expectancy. In this context, a scheme for providing nutritious meal to the school going children would appear as the need of the hour in view of its manifold beneficial impact.

Government of Gujarat, for sometime past, has been considering the introduction of a Mid day Meal Scheme in the primary Schools of the State. The State has some experience of running such programme on a limited scale under the ICDS under which about 1 million children are fed currently. However, in the context of what is stated above,the scheme will have to be conceived on a more comprehensive scale to realize the following objectivies :-

- Providing Mid-day Meals to the children in primary schools will constitute a complimentarily to the poverty alleviation efforts of the State;

- Such a scheme will significantly raise the nutritional standards of the children in the growing age group;

- Mid-day Meal scheme can attract more students to schools especially from the poorer sections, besides improving the general attendance and preventing drop-outs;

- The Scheme will generate some employment in each village;

- The scheme will constitute a step towards social and national integration.

With the above-mentioned considerations in view, it has been decided to introduce the following scheme:"

Thus,considering the scheme and the underlined objects thereof, it is specifically mentioned in the above mentioned resolution dated 9th November,1984 that

the Scheme will generate some employment in each village. In view of this object, as per my opinion, the restrictions imposed by circular dated 8.5.2000 are in consonance with the said object of the resolution dated 9th November, 1984. Therefore, if the preference has been given by the State Government to the rural areas for opportunity of some work, then, same cannot be considered to be arbitrary as alleged. It is also necessary to be noted that in the said scheme, preference may be given to the widows and destitute women from the village. Preferably only one person should be appointed from a family.There is,however,no objection to take widow woman and her daughter as cook and helper but under no circumstances shall all the three functionaries be from the same family. Thus, the ultimate object and the purpose of the scheme is to generate some employment in the rural area meaning thereby in village.

I have considered the circular dated 8th May,2000 which is under challenge in this group of petitions. I have considered the resolution of the Government in its Education Department dated 9th November, 1984. IN the circular dated 8th May, 2000, it has been decided that all the persons in the scheme working in the village must have to be employed in the scheme from one village so that the scheme may work smoothly. From the said circular, it appears that on any centre,if any person is not available inspite of issuance of advertisement and if the centre is likely to be closed for want of appointment of the staff, then, it was kept open for the Deputy Collector in such eventuality to make appointment by giving relaxation in the standards of appointment but before giving appointment, it was required to be certified by the Mamlatdar by issuing certificate that the persons having qualification and eligibility are not available. I have also considered item no.12 of the said circular. I have also considered the sub clause of the said item which has been objected by the petitioners. As per sub clause (k) of clause 12 of the said circular, husband/wife/son/daughter/dependents of the employee/s who has been working in the State Government, local self government or in the institution getting grant in aid from the State Government or who has been holding office in the local self Government (Panchayat, Nagarpalika or Mahanagarpalika) or who has been elected therein shall not be given appointment as Sanchalak, Cook or Assistant in the Centre. As per sub clause (kh) of clause 12 of the said circular, husband/wife/son/daughter/dependents of the employee or employees who has been performing duties either for full time or for part time in the State Government or the Central Government or in the public

sector undertaking of the State Government or the Central Government shall not be given appointment as such in the centres. As per the said circular, dependents of the person/s who is/are engaged in the business of running flour mill, engaged in the business of fruit vegetables etc.or doing the business of wood or getting honorarium from any place or who has been compulsorily retired or dismissed from the services of the State Government or the Central Government Public Sector Undertakings shall not be given appointment as such in the centres. Likewise, who are not fit for being appointment for some other reasons also shall not be given appointment as such. As per said circular, persons running the fair price shop shall not be given appointment as such and who has previously performing duties in the Mid day Meal Centre and who has been discharged on account of serious irregularities also shall not be given appointment in the centres. Therefore, considering the circular dated 8.5.2000 and considering item no.12 in particular, as per my opinion, these are the reasonable restrictions imposed by the Government with a view to achieve the ultimate and underlined object of the scheme to generate the employment in the rural areas especially in the village areas. There is also reasonable classification between the person/s residing in the village/rural areas and the person/s residing in the urban areas. As per my view, the persons residing in the village area and the persons residing in the urban areas cannot be considered to be equal but are unequal and,therefore, there is reasonable classification as well as restriction imposed by the State Government by issuing the said circular dated 8th May, 2000 to achieve the objects of the scheme as mentioned in the resolution dated 8th November, 1984 after having experience of 16 years by the State Government. Therefore, according to opinion, there is nothing wrong to issue such a circular to give preference and priority to such family in which no member is earning and where no income has been received from any source and,therefore, if some source has been provided while putting some restriction upon such family who are receiving some source of income while working in the local government, State Government or the Central Government and receiving salary or honorarium and, therefore, as per my view, such restrictions and classification is reasonable and the same cannot be considered to be arbitrary, malafide or violative of the fundamental rights of the petitioners as alleged. I am, therefore, of the view that there is nothing wrong in issuing such restriction by circular dated 8.5.2000.

It is now well settled that what Article 14

forbids is hostile discrimination and not reasonable classification. Equality before law does not mean that the same set of law should apply to all persons under every circumstance ignoring differences and disparities between mean and things. A reasonable classification is inherent in the very concept of equality, because all persons living on this earth are not alike and have different problems. Some may be wealthy, some may be poor,some may be educated,some may be uneducated; some may be highly advanced and other may be economically backward. It is for the State to make a reasonable classification which must fulfil two conditions as under:

(1) Classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group.

(2) The differentia must have a reasonable nexus to the object sought to be achieved by the statute.

As per my view, upon perusal of the resolution dated 9th November, 1984 as well as the circular dated 8th May, 2000, the classification has been found to have been made on an intelligible differentia which has distinguished persons that are grouped therein from the others left out of the group and such differentia is having reasonable nexus to the object sought to be achieved by resolution dated 9th November, 1984.

Before parting with this judgment, the observations made by the apex court in case of MP Oil Extraction and Anr. reported in Judgments Today 1997 (6) SC 97 are required to be considered In para 41 of the said judgment, the apex court has observed as under:

"41. After giving our careful consideration to the facts and circumstances of the case and to the submissions made by the learned counsel for the parties, it appears to us that the industrial policy of 1979 which was subsequently revised from time to time cannot be held arbitrary and based on no reason whatsoever but founded on mere ipsidixit of the State Government of M.P. The executive authority of the State must be held to be within its competence to frame policy for the administration of the State. Unless the policy framed is absolutely capricious and not being informed by any reason whatsoever,can be clearly held to be arbitrary and founded on mere ipsidixit of the executive functionaries thereby offending Article 14 of the COnstitution or such

policy offends other constitutional provisions or comes in conflict with any statutory provision, the court cannot and should not out-step its limit and tinker with the policy decision of the executive functionary of the State.This Court, in no uncertain term, has sounded a note of caution by indicating that policy decision is in the domain of the executive authority of the State and the Court should not embark on the unchartered ocean of public policy and should not question the efficacy or otherwise of such policy so long the same does not offend any provision of the statute or the constitution of India. The supremacy of each of three organs of the State i.e. legislature, executive and judiciary in their respective field of operation needs to be emphasized. The power of judicial review of the executive legislative action must be kept within the bounds of constitutional scheme so that there may not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism being very often talked of in these days. The democratic set up to which the policy is so deeply committed cannot function properly unless each of the three organs appreciate the need for mutual respect and supremacy in their respective field."

In the very same decision, it has been observed by the apex court that the distinctive features between the industrial unit set up at the instance of the State Government and the old existing units are based on objective criteria and,therefore,said two class of industries are not similarly circumscribed. It has been observed that Article 14 prohibits discrimination amongst equal in equal circumstances but it should be appreciated that Article 14 has in built flexibility and it also permit different treatment to unequals.

Similarly, the apex court has, in case of State of West Bengal and others versus Rabindra Nath Sen Gupta and others reported in FLR 1998 (79) page 251, observed as under:

"The policy is in the domain of executive authority of the State Government. So long as the policy is not arbitrary, capricious and based on no reason thereby offending, Article 14 of the Constitution, the Court should not out step its limit and tinker with the policy decision of the

State Government."

After considering the above two decisions of the apex court and while keeping in mind the object and purpose of the scheme, and also considering the nature of work which has been required to be performed by the person in the said scheme and receiving honorarium, no colour to such work can be given like regular employment and there is no relationship of employer and employee as alleged. The word 'honorarium' itself suggests that there was no relationship of employer and the employee between the parties. Honorarium is not wagess or salary but it amounts to payment of rendering some service with particular purpose. Therefore, considering all these aspects of the matter, according to my opinion, circular dated 8.5.2000 cannot be considered to be arbitrary, malafide, denying right of any person or violative of any fundamental rights of any person as alleged and it cannot be considered to be illegal in any manner and, therefore, same cannot be interfered with by this court while exercising extra ordinary jurisdiction under Article 226 of the COnstitution of India. This court is having very limited jurisdiction to examine the policy decision of the executive authority when his court has found that the said circular has been issued with a view to achieve the real object of the scheme and,therefore, no interference is required in such policy decision of the State Government while exercising powers under Article 226 of the COnstitution of India. It is further declared that the said circular is not hit by Article 14, 16, 19 and 21 of the Constitution of India as alleged and, therefore, according to my opinion, there is no substance in all these petitions and, therefore, all these petitions are required to be dismissed.

For the aforesaid reasons, all these petitions are dismissed. Notice in each of the petitions shall stand discharged. There shall be no order as to costs.

18.12.2000. (H.K. Rathod,J.)

After the aforesaid judgment has been pronounced in the open Court, learned advocate Mr. Raval has submitted that the operation of the judgment pronounced by this court may be stayed. Such a prayer made by Mr. Raval has been objected by Ms. Manisha Lavkumar, learned AGP as well as Mr. Clerk, and other learned advocates appearing for the respondents. Therefore, such prayer made by Mr. Raval cannot be granted. However, considering the submissions made by the learned advocates

for the respective parties, earlier, this court passed order in special civil application no. 6244 of 2000 on 30th June, 2000 to the effect that there shall be ad interim stay of the operation of sub clauses (ka) and (kha) of clause 12 of the circular dated 8.5.2000 at annexure "A" to the petition and the respondents were restrained by the said order from not employing the petitioners under the Mid Day Meal Scheme only on the basis of the aforesaid sub clauses (ka) and (kha) of clause 12 of the circular dated 8.5.2000 and till the returnable date, the respondents were directed to employ those petitioners whose services are required and whose services were in past found to be satisfactory. Therefore, in view of the ad interim orders passed by this court on 30.6.2000, some of the petitioners have been given appointment by the respondents and, therefore, ad interim relief granted by this court on 30th June, 2000 in special civil application no. 6244 of 2000 shall continue to operate till 15th January, 2001. It is clarified that the said ad interim relief which has been directed to continue upto 15th January, 2001 is in respect of special civil application No. 6244 of 2000 alone. However, it will be open for the petitioners to approach the respondent authority as per the order passed by this court in special civil application no. 8025 of 2000 dated 24th July, 2000 and as and when the petitioners will approach the respondent authority, the respondent authority will definitely consider the same in light of the earlier orders passed by this court on 24th July, 2000 in special civil application no. 8025 of 2000.

(H.K. Rathod,J.)

18.12.2000.
Vyas